AF/A IFW

PATENT
Attorney Docket No. 205718
Client Reference No. 149524.02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:

STOKES et al.

Application No. 09/696,390

Art Unit: 2697

Examiner: Antonio A. Caschera

Filed: October 25, 2000

For: SYSTEM AND METHOD FOR APPLYING COLOR MANAGEMENT ON CAPTURED IMAGES

TRANSMITTAL OF
APPELLANTS' APPEAL BRIEF

U.S. Patent and Trademark Office
Randolph Building
401 Dulany Street, Customer Window, Mail Stop Appeal Brief - Patents
Alexandria, VA 22314

Dear Sir:

In accordance with 37 CFR 41.37, appellants hereby submit Appellants' Brief on Appeal.

The items checked below are appropriate:

1. Status of Appellants

This application is on behalf of ☒ other than a small entity or ☐ a small entity.

2. Fee for Filing Brief on Appeal

Pursuant to 37 CFR 41.20(2), the fee for filing the Brief on Appeal is for: ☒ other than a small entity or ☐ a small entity.

Brief Fee Due $500.00

3. Oral Hearing

☐ Appellants request an oral hearing in accordance with 37 CFR 41.47.

A separate paper requesting oral hearing is attached.

4. Extension of Time

☒ Appellants petition for a one-month extension of time under 37 CFR 1.136, the fee for which is $120.00.

☐ Appellants believe that no extension of time is required. However, this conditional petition is being made to provide for the possibility that appellants have inadvertently overlooked the need for a petition and fee for extension of time.

Extension fee due with this request: $120.00

5. Total Fee Due

The total fee due is:

Brief on Appeal Fee	$500.00
Request for Oral Hearing	$ 0.00
Extension Fee (if any)	$120.00

Total Fee Due: $620.00

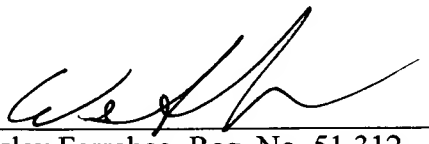
6. Fee Payment

☐ Attached is a check in the sum of $.
☒ Charge Account No. 12-1216 the sum of $620.00. A duplicate of this transmittal is attached.

7. Fee Deficiency.

☒ If any additional fee is required in connection with this communication, charge Account No. 12-1216. A duplicate copy of this transmittal is attached.

Respectfully submitted,



A. Wesley Ferrebee, Reg. No. 51,312
LEYDIG, VOIT & MAYER
700 Thirteenth Street, N.W., Suite 300
Washington, DC 20005-3960
(202) 737-6770 (telephone)
(202) 737-6776 (facsimile)

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Dear Sir:

In support of the appeal from the final rejection dated May 6, 2004, Appellants now submit their Brief.

Real Party In Interest

The patent application that is the subject of this appeal is assigned to Microsoft Corporation.

Related Appeals and Interferences

There are no appeals or interferences that are related to this appeal.

Status of Claims

This application was filed with 33 claims. Claims 2, 13, 15, 25, and 30 have been canceled, so that claims 1, 3-12, 14, 16-24, 26-29, and 31-33 remain pending. No claim is

allowed and the final rejection of all claims is appealed. The claims on appeal appear in the Claims Appendix.

Status of Amendments

An amendment was filed after final rejection. An Advisory Action indicated that the Amendment was entered.

Summary of Claimed Subject Matter

The invention is directed to an image acquisition framework of a computer that enables a device driver for an image-capturing device (e.g., a scanner) to automatically apply color management operations to image data captured by the image-capturing device. Instead of providing its own color management functions, the device driver leverages the advanced color management functions provided by the operating system of the computer. To that end, the operating system provides a color management application programming interface (API), which can be called by the device driver to invoke the functions of a color management component of the operating system.

Also, parameters for image acquisition by the image-capturing device are contained in an image acquisition control data structure, and the parameters are set by the application by calling an image acquisition API. One of the parameters is a color management parameter that indicates whether color management is to be performed on an image captured by the image-capturing device. In response to a request from the application to acquire an image, the device driver checks the image acquisition control parameters and controls the image-capturing device to obtain an image according to the image acquisition parameters. When the device driver receives the captured image from the device, if the color management parameter is set, it calls the color management API to invoke a color management function of the color management component. The device driver then forwards the processed image data to the application.

The invention according to claim 1 is directed to a computer-readable medium having computer-executable components for acquiring color images using an image-capturing device for use by an application. The invention according to claim 24 is directed to a computer system embodying the components of claim 1. These embodiments of the invention include a color

management component of an operating system having color management functions for performing color management operations (see Element 90, Figure 2 and page 10, lines 15-19 of the patent application). Also included is an image acquisition interface for calling by the application to set image acquisition control parameters in an image acquisition control data structure, said image acquisition control parameters including a color management parameter indicating whether color management is required (see Element 110, Figure 2; page 15, lines 19-23; and page 17, lines 4-14 of the patent application). Further included is a device driver for the image-capturing device, the device driver controlling the image-capturing device to start an image-capturing operation according to the image acquisition control parameters in response to a data acquisition request by the application, receiving color image data for a captured image from the image-capturing device, and invoking a color management function of the color management component to operate on the color image data of the captured image when the color management parameter is set to indicate that color management is required (see Element 80, Figure 2 and page 21, line 13 to page 22, line 15 of the patent application).

These embodiments of the invention still further include a color management application programming interface for calling by the device driver to invoke color management functions of the color management component (see Element 84 of Figure 2 and page 11, lines 19-23 of the patent application). Also included is an image acquisition service module operating between the image-processing application and the device driver to deliver requests by the application to the device driver and forwarding color image data from the device driver to the application (see Element 100, Figure 2 and page 14, lines 16-27 of the patent application).

The invention according to claim 14 is directed to a computer-readable medium having computer-executable instructions for performing steps by a device driver for controlling an image-capturing device for generating color image data for use by an application. The invention according to claim 29 is directed to a method of controlling an image-capturing device for generating color image data for use by an application. These embodiments of the invention include the step of checking image acquisition control parameters in an image acquisition control data structure, said image acquisition control parameters being set by the application and including a color management parameter indicating whether color management is to be performed (see Step 150, Figure 4 and page 21, line 23 to page 22, line 2 of the patent application). Also performed is the step of controlling the image-capturing device to perform an image-capturing operation according to the image acquisition control parameters in response to

an acquisition request by the application (see Step 146, Figure 4 and page 21, lines 13-20 of the patent application). Further performed is the step of receiving from the image-capturing device color image data generated in the image-capturing operation (see Step 148, Figure 4 and page 21, lines 13-20 of the patent application).

These embodiments of the invention still further include the step of calling a color management application programming interface to invoke a color management function of a color management component of an operating system to process the color image data received from the image-capturing device when the color management parameter is set to indicate that color management is to be performed (see Step 152, Figure 4 and page 21, line 21 to page 22, line 8 of the patent application). Also included is the step of forwarding the processed color image data to the application via an image acquisition service module, the image acquisition service module operating between the application and the device driver to deliver requests by the application to the device driver and forwarding color image data from the device driver to the application (see Element 154, Figure 4 and page 22, lines 8-11 of the patent application).

The identification of elements of embodiments illustrated in the patent application is supplied only to conform to 37 CFR 41.37(c)(1)(v) and does not limit the scope of the claimed subject matter.

Grounds of Rejection to be reviewed on Appeal

Claims 1, 11, 14, 23, 24, 28, 29, and 33 stand rejected under 35 U.S.C. § 102(b) as anticipated by Lavendel et al. (US Pat. Pub. 2002/0126147, hereinafter Lavendel).

Claims 3-8, 10, 16-22, 26, 27, 31, and 32 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Lavendel in view of Shiraiwa (US Pat. 6,611,621).

Claim 9 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Lavendel in view of Shiraiwa and further in view of Lipton (US Pat. 5,835,098).

Claim 12 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Lavendel in view Lipton.

Argument

The rejection of claims 1, 11, 14, 23, 24, 28, 29, and 33 as anticipated by Lavendel is erroneous. It is fundamental that to anticipate a claim, the applied reference must teach every limitation of the rejected claim. Lavendel fails to teach every limitation of claims 1, 11, 14, 23, 24, 28, 29, and 33.

The rejection of claims 3-8, 10, 16-22, 26, 27, 31, and 32 as unpatentable over Lavendel and Shiraiwa is erroneous. It is fundamental that to establish *prima facie* obviousness, the applied references must teach or suggest all of the limitations of the rejected claims. No combination of Lavendel and Shiraiwa teaches or suggests all of the limitations of claims 3-8, 10, 16-22, 26, 27, 31, and 32.

The rejection of claim 9 as unpatentable over Lavendel, Shiraiwa, and Lipton is erroneous. It is fundamental that to establish *prima facie* obviousness, the applied references must teach or suggest all of the limitations of the rejected claims. No combination of Lavendel, Shiraiwa, and Lipton teaches or suggests all of the limitations of claim 9.

The rejection of claim 12 as unpatentable over Lavendel and Lipton is erroneous. It is fundamental that to establish *prima facie* obviousness, the applied references must teach or suggest all of the limitations of the rejected claims. No combination of Lavendel and Lipton teaches or suggests all of the limitations of claim 12.

Lavendel Fails to Teach Every Element of Claims 1, 14, 24, and 29

Lavendel Teaches No Integration With Operating System

Claims 1 and 24 are directed to a computer-readable medium having computer-executable components for acquiring color images using an image-capturing device for use by an application, and a like computer system. Both claims recite "a color management component **of an operating system** having color management functions for performing color management operations." Claims 14 and 29 are directed to a computer-readable medium having computer-executable instructions for performing steps by a device driver for controlling an image-capturing device for generating color image data for use by an application, and a method of controlling an image-capturing device for generating color image data for use by an application, respectively. Both claims recite "calling a color management application programming interface

to invoke a color management function of a color management component **of an operating system** to process the color image data received from the image-capturing device when the color management parameter is set to indicate that color management is to be performed." The Examiner contends that these limitations are taught by the tone control facility of the TWAIN core control. Applicants' respectfully submit that the Examiner's contention is erroneous.

In the invention, the color management component is provided as integrated with the operating system, giving it the advantage of more consistent color interchange (see page 11, line 19 to page 12, line 4 of the patent application). By contrast, the alleged color management component of Lavendel (the TWAIN tone control) is part of a TWAIN application that is installed on top of the operating system (see paragraphs 17 and 55, and Figure 4 of Lavendel). Because different TWAIN data sources may provide different color adjustment parameters, Lavendel cannot achieve the advantage of the present invention, where the color management component is unified in the operating system thus providing standardized color interchange. Therefore, Lavendel clearly fails to teach a color management component of an operating system. Accordingly, the rejection is erroneous and should be withdrawn.

At the time of the invention, no known operating system included an integrated color management interface. In response to Applicants' argument that the cited art did not teach a color management component that is a component of an operating system, the Examiner stated in the Advisory Action that "in order for the WIA architecture to use the TWAIN library, the TWAIN library must, in some way, be integrated and therefore, be apart [sic] of the operating system." Applicants respectfully submit that this assertion is erroneous. If one accepted the Examiner's assertion as true, then any installed software used by an operating system would be viewed as an integrated component of the operating system. However, hypothetically, if color managing software A is installed on an operating system and color managing software B is also installed on the operating system, there is no guarantee that an application using color managing software will get a consistent color interchange when using color manager A versus color manager B. Accordingly, the lack of integration with the operating system is a significant deficiency of the prior art, including Lavendel.

The Examiner includes an additional reference to provide support that the TWAIN control of Lavendel is integrated within an operating system. However, the document provided, "What's New in Device and Hardware Support" by Dave Morehouse, was published June 1, 2001 (as indicated on the publication and the PTO-892 form). Thus, the document's publication

date occurred over 6 months after the filing of the present application, and over a year after the filing of the provisional application (App. No. 60/185,034, filed February 25, 2000) from which this application claims priority. Accordingly, the document has no relevance to the state of the art at the time of the claimed invention.

Lavendel Does Not Teach A Color Management Parameter Indicating Whether Color Management Is Required

Furthermore, with regard to claims 1 and 24, Lavendel fails to teach "a device driver for the image-capturing device... invoking a color management function of the color management component to operate on the color image data of the captured image **when the color management parameter is set to indicate that color management is required.**" Likewise, with respect to claims 14 and 29, Lavendel fails to teach a device driver "calling a color management application programming interface to invoke a color management function of a color management component of an operating system...**when the color management parameter is set to indicate that color management is to be performed.**"

In the present invention, parameters for image acquisition by the image-capturing device are contained in an image acquisition control data structure, and the parameters are set by the application by calling an image acquisition API. One of the parameters is a color management parameter that indicates whether color management is to be performed on an image captured by the image-capturing device. In response to a request from the application to acquire an image, the device driver checks the image acquisition control parameters and controls the image-capturing device to obtain an image according to the image acquisition parameters. When the device driver receives the captured image from the device, if the color management parameter is set, it calls the color management API to invoke a color management function of the color management component. The device driver then forwards the processed image data to the application.

By contrast, Lavendel discloses that it is the image input operations manager 49, not any device driver, that is responsible for determining whether color management is to be performed and for sending image data to the appropriate module for such color management (see paragraphs 61-63 and Figure 4 of Lavendel). Thus, Lavendel never discloses anything suggesting that device driver 51 invokes a color management function, nor does Lavendel disclose that device driver 51 checks a color management parameter.

In contending that Lavendel teaches the color management parameter indicating color management is to be performed, as well as a device driver invoking color management in response to that parameter, the Examiner asserts that:

> "the Office interprets the image acquisition parameters of Lavendel et al. to inherently teach indicating whether color management is required as the image acquisition manager is responsible for sending data to the optional image processing modules (i.e. color adjustment), if necessary" (see page 3 of the Final Official Action).

The Examiner further asserts that:

> "the office interprets Lavendel et al. to inherently teach the device driver invoking a color management function when a color management parameter is set to indicated [sic] color management as Lavendel et al. discloses the device driver to control acquisition, including color management, based on user manipulation of the user interfaces which include options for color management" (see page 4 of the Final Official Action).

Applicants respectfully submit that the Office's interpretation of inherency is erroneous. "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted). "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Here, the Examiner has not established that a color management parameter indicating color management is to be performed, and a device driver invoking color management in response to that parameter, **necessarily** flow from the teachings of Lavendel.

For any and all of the foregoing reasons, the rejection of claims 1, 14, 24 and 29 is erroneous, and should be withdrawn.

The Rejection Of Claims 11, 23, 28, and 33 Is Erroneous

The propriety of the rejection of claims 11, 23, 28, and 33 depend upon the propriety of the rejection of claims 1, 14, 24, and 29. As previously discussed, the rejection of claims 1, 14, 24, and 29 is erroneous. Accordingly, the rejection of claims 11, 23, 28, and 33 is also erroneous.

The Rejection Of Claims 3-8, 10, 16-22, 26, 27, 31, and 32 Is Erroneous

The rejection of claims 3-8, 10, 16-22, 26, 27, 31, and 32 relies on the assertion that Lavendel teaches all of the limitations of claims 1, 14, 24, and 29. As previously argued, Lavendel fails to teach every limitation of claims 1, 14, 24, and 29. Shiraiwa also fails to teach or suggest those limitations that are absent in Lavendel. Accordingly, the combination of Lavendel and Shiraiwa cannot teach or suggest all of the limitations of claims 3-8, 10, 16-22, 26, 27, 31, and 32, the rejection of which is also erroneous.

The Rejection Of Claim 9 Is Erroneous

The rejection of claim 9 relies on the assertion that Lavendel teaches all of the limitations of claims 1, 14, 24, and 29. As previously argued, Lavendel fails to teach every limitation of claims 1, 14, 24, and 29. Shiraiwa and Lipton also fail to teach or suggest those limitations that are absent in Lavendel. Accordingly, the combination of Lavendel, Shiraiwa, and Lipton cannot teach or suggest all of the limitations of claim 9, the rejection of which is also erroneous.

The Rejection Of Claim 12 Is Erroneous

The rejection of claim 12 relies on the assertion that Lavendel teaches all of the limitations of claims 1, 14, 24, and 29. As previously argued, Lavendel fails to teach every limitation of claims 1, 14, 24, and 29. Lipton also fails to teach or suggest those limitations that are absent in Lavendel. Accordingly, the combination of Lavendel and Lipton cannot teach or suggest all of the limitations of claim 12, the rejection of which is also erroneous.

Summary

The rejection of claims 1, 3-12, 14, 16-24, 26-29, and 31-33 must be reversed since the elements of the rejected claims are neither disclosed nor suggested in Lavendel, Shiraiwa, or Lipton, or any combination thereof.

Respectfully submitted,

A. Wesley Ferrebee, Reg. No. 51,312
LEYDIG, VOIT & MAYER
700 Thirteenth Street, N.W., Suite 300
Washington, DC 20005-3960
(202) 737-6770 (telephone)
(202) 737-6776 (facsimile)

Date: 1/28/05

Claims Appendix

1. A computer-readable medium having computer-executable components for acquiring color images using an image-capturing device for use by an application, comprising:

a color management component of an operating system having color management functions for performing color management operations;

an image acquisition interface for calling by the application to set image acquisition control parameters in an image acquisition control data structure, said image acquisition control parameters including a color management parameter indicating whether color management is required;

a device driver for the image-capturing device, the device driver controlling the image-capturing device to start an image-capturing operation according to the image acquisition control parameters in response to a data acquisition request by the application, receiving color image data for a captured image from the image-capturing device, and invoking a color management function of the color management component to operate on the color image data of the captured image when the color management parameter is set to indicate that color management is required;

a color management application programming interface for calling by the device driver to invoke color management functions of the color management component; and

an image acquisition service module operating between the image-processing application and the device driver to deliver requests by the application to the device driver and forwarding color image data from the device driver to the application.

3. A computer-readable medium as in claim 1, wherein the color management function called by the device driver performs a color space conversion that converts the color image data from a color space of the image-capturing device to a destination color space.

4. A computer-readable medium as in claim 3, wherein the destination color space has a substantially linear gamma with respect to uniform human perception.

5. A computer-readable medium as in claim 4, wherein the destination color space is the sRGB color space.

6. A computer-readable medium as in claim 3, wherein the destination color space has a substantially linear gamma with respect to luminance.

7. A computer-readable medium as in claim 6, wherein the destination color space is the scRGB color space.

8. A computer-readable medium as in claim 3, wherein the color space conversion is based on a color profile of the image-capturing device.

9. A computer-readable medium as in claim 8, wherein the color space conversion includes embedding a destination profile of the destination color space in the converted color image data.

10. A computer-readable medium as in claim 8, wherein the color profile of the image-capturing device is identified as one of the operation parameters of the image-capturing device.

11. A computer-readable medium as in claim 1, wherein the device driver forwards the color image data received from the image-capturing device to the image-processing application without performing color management thereon when the color management parameter is set to indicate that no color management is required.

12. A computer-readable medium as in claim 11, wherein the color image data of the captured image has a source color profile embedded therein.

14. A computer-readable medium having computer-executable instructions for performing steps by a device driver for controlling an image-capturing device for generating color image data for use by an application, the instructions operable to perform a process comprising the steps of:

checking image acquisition control parameters in an image acquisition control data structure, said image acquisition control parameters being set by the application and including a color management parameter indicating whether color management is to be performed;

controlling the image-capturing device to perform an image-capturing operation according to the image acquisition control parameters in response to an acquisition request by the application;

receiving from the image-capturing device color image data generated in the image-capturing operation;

calling a color management application programming interface to invoke a color management function of a color management component of an operating system to process the color image data received from the image-capturing device when the color management parameter is set to indicate that color management is to be performed; and

forwarding the processed color image data to the application via an image acquisition service module, the image acquisition service module operating between the application and the device driver to deliver requests by the application to the device driver and forwarding color image data from the device driver to the application.

16. A computer-readable medium as in claim 14, wherein the called color management function performs a color space conversion that converts the color image data from a color space of the image-capturing device to a destination color space.

17. A computer-readable medium as in claim 16, wherein the destination color space has a substantially linear gamma with respect to uniform human perception.

18. A computer-readable medium as in claim 17, wherein the destination color space is the sRGB color space.

19. A computer-readable medium as in claim 16, wherein the destination color space has a substantially linear gamma with respect to luminance.

20. A computer-readable medium as in claim 19, wherein the destination color space is the scRGB color space.

21. A computer-readable medium as in claim 16, wherein the color space conversion is based on a color profile of the image-capturing device.

22. A computer-readable medium as in claim 20, wherein the color profile of the image-capturing device is identified as one of the operation parameters of the image-capturing device.

23. A computer-readable medium as in claim 14, having further computer-executable instructions for performing the step of forwarding the color image data received from the image-capturing device to the image-processing application without performing color management thereon when the color management parameter is set to indicate that no color management is required.

24. A computer system comprising:

an image-capturing device;

a color management component of an operating system having color management functions for performing color management operations;

an image acquisition interface for calling by an application to set image acquisition control parameters in an image acquisition control data structure, said image acquisition control parameters including a color management parameter indicating whether color management is required;

a device driver for the image-capturing device, the device driver controlling the image-capturing device to start an image-capturing operation according to the image acquisition control parameters in response to a data acquisition request by the application, receiving color image data for a captured image from the image-capturing device, and invoking a color management function of the color management component to process the color image data of the captured image when the color management parameter is set to indicate that color management is required;

a color management application programming interface for calling by the device driver to invoke color management functions of the color management component of the operating system; and

an image acquisition service operating between the image-processing application and the device driver to deliver requests by the application to the device driver and forwarding color image data from the device driver to the application.

26. A computer system as in claim 24, wherein the color management function called by the device driver performs a color space conversion that converts the color image data from a color space of the image-capturing device to a destination color space.

27. A computer system as in claim 26, wherein the color space conversion is based on a color profile of the image-capturing device, and wherein the color profile of the image-capturing device is identified as one of the operation parameters of the image-capturing device.

28. A computer system as in claim 24, wherein the device driver is programmed to forward the color image data received from the image-capturing device to the image-processing application without performing color management thereon when the color management parameter is set to indicate that no color management is required.

29. A method of controlling an image-capturing device for generating color image data for use by an application, comprising the steps of:

checking image acquisition control parameters in an image acquisition control data structure, said image acquisition control parameters being set by the application and including a color management parameter indicating whether color management is to be performed;

controlling the image-capturing device to perform an image-capturing operation according to the image acquisition control parameters in response to an acquisition request by the application;

receiving from the image-capturing device color image data generated in the image-capturing operation;

calling a color management application programming interface to invoke a color management function of a color management component of an operating system to process the color image data received from the image-capturing device when the color management parameter is set to indicate that color management is to be performed, and

forwarding the processed color image data to the application via an image acquisition service module, the image acquisition service module operating between the application and the device driver to deliver requests by the application to the device driver and forwarding color image data from the device driver to the application.

31. A method as in claim 29, wherein the called color management function performs a color space conversion that converts the color image data from a color space of the image-capturing device to a destination color space.

32. A method as in claim 31, wherein the color space conversion is based on a color profile of the image-capturing device, and wherein the color profile of the image-capturing device is identified as one of the operation parameters of the image-capturing device.

33. A method as in claim 29, including the step of forwarding the color image data received from the image-capturing device to the image-processing application without performing color management thereon when the color management parameter is set to indicate that no color management is required.

Evidence Appendix

No evidence was submitted pursuant to 37 CFR 1.130, 1.131, or 1.132.

Related Proceedings Appendix

There are no Related Proceedings.